

OPINION NUMBER 91-1

DATE: July 22, 1991

SUBJECT: Civil Service Commission Termination Appeal Procedures

REQUESTED BY: Richard Snapper, Personnel Director

PREPARED BY: John M. Kaheny, Chief Deputy City Attorney

QUESTION PRESENTED

May Rule XI of the Civil Service Commission ("Commission"), which addresses the procedures for appeals of removals of permanent employees from City employment, be amended to authorize a single Commissioner to hear an appeal by a permanent employee from his or her removal for cause from City employment?

CONCLUSION

The provisions of San Diego City Charter ("Charter") sections 118 and 129 authorize the City Council to adopt, by ordinance, rules and regulations that establish the procedures for conducting hearings of the Commission. Once the Mayor, City Council and the Civil Service Commission have discharged the obligation to meet and confer under the Meyers-Milias-Brown Act, Civil Service Rule XI, sections 5 and 7 may be amended to provide that, in the case of the removal of a permanent employee from City employment, the Commission may appoint one of its members as a hearing officer to hear the appeal and submit findings and a proposed decision to the Commission for its review and ratification.

BACKGROUND

For many years, Civil Service Rule XI, San Diego Municipal Code (SDMC) section 23.1201 et seq., has provided that in the case of the removal from employment for cause, a permanent City employee has a right to a public hearing before a quorum of the Commission. In the case of a suspension, the Commission is authorized, at its discretion, to appoint one or more of its members to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission ratifies or modifies the decision concerning the suspension. At least one recognized employee organization has recommended to you that the assignment of a single hearing officer to hear a termination appeal might be beneficial because of scheduling considerations. You have asked if there is any legal impediment to amending the Civil Service Rules to implement such a procedure.

ANALYSIS

Charter section 129 states in part as follows:

Section 129. Removals, Suspension and Layoffs.

Upon attaining permanent status pursuant to the Rules of the Civil Service Commission, any officer or employee of the City in the classified service may be removed from office or employment for cause by the appointing authority. . . . Following the public hearing, and such investigation as the Civil Service Commission may see fit to make, the Commission shall report its findings and recommendations to the authority responsible for the removal as specified in the notice.

. . .

Any officer or employee of the City in the classified service may be suspended from office or employment for cause or for investigation of misconduct by the appointing authority. . . . The Civil Service Commission shall by rules or regulations, establish procedures for conducting hearings and/or investigations, and reporting findings and recommendations to the appointing authority. All findings and recommendations in any such case shall be final.

. . . .

Charter section 118 states in part as follows:

Section 118. Rules.

The Civil Service Commission shall recommend to the City Council all rules and amendments thereto for the government

control of the classified service. No rule or amendment thereto shall become effective until it shall have been adopted by ordinance after a public hearing thereon, with notice of such hearing first given by publication of such rule or amendment thereto in full once in the official newspaper of the City at least ten (10) days prior to said hearing and by posting of such rule or amendment thereto in full in three public places at least ten (10) days prior to the said hearing thereon. Following such public hearing the City Council may adopt the rule or amendment as recommended by the Civil Service Commission, may amend the same, or may reject the said recommendation. Any rule or amendment thereto adopted by ordinance shall have the force and effect of law.

. . . .

Civil Service Rule XI, section 5 (SDMC section 23.1205) entitled "Appeal of Removal" uses the term Commission when describing the procedural steps used in a termination proceeding. However, Civil Service Rule XI, section 7 (SDMC section 23.1207) grants the Civil

Service Commission the authority to appoint one or more of its members to hear an appeal and submit findings of facts and a decision to the Commission for ratification. That Rule states:

Section 23.1207 Appeal of Suspension

The procedures and rights for any employee in the classified service appealing a suspension shall be the same as those prescribed in the rules relating to removal of an employee who has attained permanent status, except that the Commission, at its discretion, may appoint one or more of its members to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission shall ratify or may modify the decision.

It is therefore abundantly apparent that under the current Rule XI one Commissioner hearings are only available in cases of suspensions. The question then becomes whether or not the Charter mandates the Commission to sit as a body on termination appeals. The language authorizing the Commission to establish procedures for conducting hearings is found in the second paragraph of Charter section 129. That paragraph specifically begins by discussing the procedures for suspensions. The first paragraph which addresses the procedures for an appeal from a termination has no corresponding provision. However, we believe that the language authorizing the Commission to establish procedures for conducting hearings applies to both suspensions and terminations. To interpret this language of the Charter in any other way would lead to an absurd result, that being that the Commission does not have the authority to establish rules for the conduct of termination appeal hearings. *Randolph v. Bayue*, 44 Cal. 366 (1872). The better view is that this section should be read, as a whole, in order to determine the legislative intent. *City of San Jose v. Lynch*, 4 Cal. 2d 760 (1935). *Creighton v. City of Santa Monica*, 160 Cal. App. 3d 1011 (1984).

Therefore, the Commission may recommend to the Mayor and City Council that Rule XI be amended in order to provide that the Commission may appoint one of its members as a hearing officer to hear a termination appeal and submit findings and a proposed decision to the Commission for its review and final action as it currently does in cases of suspension. The same procedure may also be adopted in cases of demotion. Rule XI, section 10 (SDMC section 23.1211).

However, we also remind you that although the recommendation to amend Rule XI to provide for a single Commissioner to hear a termination appeal has evolved from discussions with an employee group, this does not relieve the City of San Diego of its obligation to meet and confer with the recognized employee groups in accordance with the provisions of the Meyers-Milias-Brown Act, Government Code section 3500 et seq., prior to amending the Civil Service Rules.

Respectfully submitted,
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APPROVED:

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